

§ 385.13

shall, in consultation with the Department of the Interior, the Environmental Protection Agency, the Department of Commerce, the Miccosukee Tribe of Indians of Florida, the Seminole Tribe of Florida, the Florida Department of Environmental Protection, and other Federal, State, and local agencies, prepare a Pilot Project Technical Data Report, documenting the findings and conclusions from the operational testing and monitoring of the pilot project. The purpose of the Pilot Project Technical Data Report is to help assess the viability of technology and to assist in the development of the full-scale project. The Corps of Engineers and the non-Federal sponsor shall also consult with the South Florida Ecosystem Restoration Task Force in preparing the report.

(1) In accordance with § 385.22(b), the draft Pilot Project Technical Data Report shall be externally peer reviewed.

(2) In accordance with § 385.18, the public shall be provided with opportunities to review and comment on the draft Pilot Project Technical Data Report.

(3) The final Pilot Project Technical Data Report shall be made available to the public.

§ 385.13 Projects implemented under additional program authority.

(a) To expedite implementation of the Plan, the Corps of Engineers and non-Federal sponsors may implement projects under the authority of section 601(c) of WRDA 2000 that are described in the Plan and that will produce a substantial benefit to the restoration, preservation, and protection of the South Florida ecosystem.

(b) Each project implemented under the authority of section 601(c) of WRDA 2000 shall:

(1) In general, follow the process described in § 385.11;

(2) Not be implemented until a Project Implementation Report is prepared and approved in accordance with § 385.26; and

(3) Not exceed a total cost of \$25,000,000.

(c) The total aggregate cost of all projects implemented under the additional program authority shall not exceed \$206,000,000.

33 CFR Ch. II (7–1–10 Edition)

§ 385.14 Incorporation of NEPA and related considerations into the implementation process.

(a) *General.* (1) In implementing the Plan, the Corps of Engineers shall comply with the requirements of NEPA (42 U.S.C. 4371, *et seq.*) and applicable implementing regulations, including determining whether a specific action, when considered individually and cumulatively, will have a significant impact on the human environment.

(2) As appropriate, other agencies shall be invited to be cooperating agencies in the preparation of NEPA documentation pursuant to § 230.16 of this chapter.

(3) The District Engineer is the NEPA official responsible for compliance with NEPA for actions conducted to implement the Plan. Unless otherwise provided for by this part, NEPA coordination for implementation of the plan shall follow the NEPA procedures established in part 230 of this chapter.

(b) *Actions normally requiring an Environmental Impact Statement (EIS).* (1) In addition to the actions listed in § 230.6 of this chapter, actions normally requiring an EIS are:

(i) Comprehensive Plan Modification Reports;

(ii) System Operating Manual or significant changes to the System Operating Manual;

(iii) Project Implementation Reports, including the draft Project Operating Manual when included in the Project Implementation Report;

(iv) Pilot Project Design Reports, including the detailed operational testing and monitoring plan; and

(v) Project Operating Manuals for any project where a Project Implementation Report is not prepared, or significant changes to Project Operating Manuals.

(2) The District Engineer may consider the use of an environmental assessment (EA) on the types of actions described in this paragraph if early studies and coordination show that a particular action, considered individually and cumulatively, is not likely to have a significant impact on the quality of the human environment.

(c) *Actions normally requiring an EA, but not necessarily an EIS.* In addition to the actions listed in § 230.7 of this

chapter, actions normally requiring an EA, but not necessarily an EIS, are modifications to Project Operating Manuals or the System Operating Manual, that do not provide for significant change in operation and/or maintenance.

(d) *Categorical exclusions.* In addition to the activities listed in §230.9 of this chapter, the following actions do not require separate NEPA documentation, either because, when considered individually and cumulatively, they do not have significant effects on the quality of the human environment or because any such effects will already have been considered in NEPA documentation prepared in accordance with paragraphs (b) and (c) of this section. However, the District Engineer should be alert for extraordinary circumstances that may dictate the need to prepare an EA or an EIS. Even though an EA or EIS is not indicated for a Federal action because of a “categorical exclusion,” that fact does not exempt the action from compliance with any other applicable Federal, State, or Tribal law, including but not limited to, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, the Coastal Zone Management Act, and the Marine Mammal Protection Act.

- (1) Project Cooperation Agreements;
- (2) Project Management Plans;
- (3) Program Management Plans;
- (4) Plans and specifications for projects;
- (5) Pilot Project Technical Data Reports;
- (6) Assessment reports prepared for the adaptive management program;
- (7) Interim goals and interim targets;
- (8) Development or revision of guidance memoranda or methods such as adaptive management, monitoring, plan formulation and evaluation, quantification of water needed for the natural system or protection of existing uses, methods of determining levels of flood protection, and similar guidance memoranda or methods; and
- (9) Deviations from Operating Manuals for emergencies and unplanned minor deviations when, considered individually and cumulatively, they do not have significant effects on the

quality of the human environment, as described in applicable Corps of Engineers regulations, including §222.5(f)(4) and §222.5(i)(5) of this chapter, and Engineer Regulation ER 1110-2-8156 “Preparation of Water Control Manuals.”

§ 385.15 Consistency with requirements of the State of Florida.

The State of Florida has established procedures, requirements, and approvals that are needed before the State or the South Florida Water Management District can participate as the non-Federal sponsor for projects of the Plan. Project Implementation Reports shall include such information and analyses, consistent with this part, as are necessary to facilitate review and approval of projects by the South Florida Water Management District and the State pursuant to the requirements of Florida law.

§ 385.16 Design agreements.

(a) The Corps of Engineers shall execute a design agreement with each non-Federal sponsor for the projects of the Plan prior to initiation of design activities with that non-Federal sponsor.

(b) Any procedures, guidance, or documents developed by the Corps of Engineers and the non-Federal sponsor pursuant to a design agreement shall be consistent with this part.

§ 385.17 Project Delivery Team.

(a) In accordance with the procedures of the Corps of Engineers business process described in Engineer Regulation ER 5-1-11 “US Army Corps of Engineers Business process,” the Corps of Engineers and the non-Federal sponsor shall form a Project Delivery Team to develop the products necessary to implement each project.

(b) The Corps of Engineers shall assign, and the non-Federal sponsor may assign, a project manager to lead the Project Delivery Team.

(c) The Corps of Engineers and the South Florida Water Management District shall encourage the participation of other Federal, State, and local agencies and the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida on Project Delivery Teams, and use their expertise to ensure that